

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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16-CV-4756 (NGG)

4 MARTIN JONATHAN BATALLA
5 VIDAL, ET AL.,

6 Plaintiffs,

United States Courthouse
Brooklyn, New York

7 - versus -

July 7, 2022
2:30 p.m.

8 KIRSTJEN M. NIELSEN, ET AL.,

9 Defendants.

10 -----x

17-CV-5228 (NGG)

11 STATE OF NEW YORK, ET AL.,

12 Plaintiffs,

United States Courthouse
Brooklyn, New York

13 - versus -

14 DONALD TRUMP, ET AL.,

15 Defendants.

16 -----x

17 TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT
18 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
19 UNITED STATES SENIOR DISTRICT JUDGE

20 APPEARANCES

21 Attorney for Plaintiffs: MAKE THE ROAD NEW YORK
22 301 Grove Street
23 Brooklyn, New York 11237
24 BY: PAIGE AUSTIN, ESQ.
25 JESSICA YOUNG, ESQ.

JEROME N FRANK LEGAL SVCS. ORG
YALE LAW SCHOOL
P.O. Box 209090
New Haven, Connecticut 06520
BY: MICHAEL J. WISHNIE, ESQ.
KAREN TUMLIN, ESQ.
KEVIN CHENG (STUDENT)
AARON BRYCE LEE (STUDENT)

1 APPEARANCES (CONTINUED)

2 National Immigration Law Center
3 3450 Wilshire Boulevard #108-62
4 Los Angeles, California 90010
BY: JESSICA HANSON, ESQ.
ARACELI MARTINEZ-OLGUIN, ESQ.

5
6 STATE OF NEW YORK
7 OFFICE OF THE ATTORNEY GENERAL
28 Liberty Street
New York, New York 10005
BY: ESTER MURDUKHAYEVA, ESQ.
LOUISA IRVING, ESQ.

9
10 Attorney for Defendant: U.S. DEPARTMENT OF JUSTICE
11 1100 L Street NW
Washington, DC 20005
BY: CORMAC EARLY, ESQ.
BRAD ROSENBERG, ESQ.

12
13
14 Court Reporter: LINDA D. DANELCZYK, RPR, CSR, CCR
15 Phone: 718-613-2330
16 Fax: 718-804-2712
Email: LindaDan226@gmail.com

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18 Proceedings recorded by mechanical stenography. Transcript
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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Call the case.

4 THE COURTROOM DEPUTY: Civil cause for oral
5 argument.

6 Beginning with the plaintiffs, please state your
7 appearance for the record.

8 THE COURT: The people in the gallery may be seated.

9 MR. WISHNIE: Good afternoon, Your Honor.

10 Michael Wishnie, Jerome N. Frank Legal Services
11 Organization of Yale Law School. And with me today is law
12 student intern Aaron Bryce Lee, whose appearance you've
13 approved and will be presenting the argument today for
14 plaintiffs.

15 THE COURT: Very good. Welcome.

16 Nice and loud, if you're wearing a mask.

17 MR. CHENG: Kevin Cheng for the Jerome N. Frank
18 Legal Services Organization of Yale Law School.

19 MS. TUMLIN: Karen Tumlin also for Jerome N. Frank
20 Legal Services.

21 THE COURT: T-U-M-L-I-N.

22 MS. AUSTIN: Good afternoon, Your Honor. Paige
23 Austin for Make the Road.

24 MS. YOUNG: Good afternoon. Jessica Young for Make
25 the Road, Your Honor.

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1 MS. MARTINEZ-OLGUIN: Good afternoon. Araceli
2 Martinez-Olguin for the National Immigration Law Center.

3 MS. HANSON: Good afternoon, Your Honor. Jessica
4 Hanson from the National Immigration Law Center.

5 THE COURT: Very good. Please be seated.

6 MS. MURDUKHAYEVA: I'm sorry, Your Honor.

7 THE COURT: I'm sorry.

8 MS. MURDUKHAYEVA: No worries. My name is Ester
9 Murkukhayeva from the New York State Office of the Attorney
10 General.

11 THE COURT: Oh, welcome.

12 MS. MURDUKHAYEVA: Thank you.

13 MR. EARLY: Good afternoon, Your Honor. Cormac
14 Early from the U.S. Department of Justice. And with me is
15 Brad Rosenberg also from the U.S. Department of Justice.

16 THE COURT: Welcome.

17 MR. EARLY: Thank you, Your Honor.

18 THE COURT: Assuming you're vaccinated, please, when
19 you speak, you can take your mask off. If you're making a
20 presentation, you can make it at the podium and -- or you can
21 remain seated. We're very informal in the era of COVID.

22 So there's a -- plaintiffs are making a motion, have
23 made a motion to modified the Court's memorandum and order of
24 December 4th, 2020. That order followed the Court's earlier
25 decision holding that Chad Wolf was not lawfully serving as

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1 the acting secretary of Homeland Security, and the result was
2 vacating of then Department's then effort to suspend DACA.

3 So, and here we are, in the aftermath of the
4 decision by the Court in the Southern District of Texas, which
5 has been appealed to the Fifth Circuit by the government,
6 which is the defendant in this case, but we have to be aware
7 and mindful of the activity that's going on in this Southern
8 District of Texas and in New Orleans at the Circuit.

9 So having said all that, I'll hear from Mr. -- is it
10 Bryce Lee?

11 MR. LEE: Just Lee.

12 THE COURT: Mr. Lee, on the motion by the plaintiff.

13 MR. LEE: Your Honor, before I begin, we have some
14 named plaintiffs in the court today, as well as some other
15 class members.

16 May I invite them to introduce themselves?

17 THE COURT: Sure, why not.

18 But if you have to -- if you're going to introduce
19 yourself, you have to take your mask off when you're speaking
20 and speak loudly so we have everything on the record.

21 MS. LARIOS: Johana Larios.

22 THE COURT: How do you spell your last name? Spell
23 your last name.

24 MS. LARIOS: L-A-R-I-O-S.

25 THE COURT: Okay.

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1 MR. BATALLA VIDAL: Martín Batalla Vidal, V-I-D-A-L.

2 MR. ALARCON: Antonio Alarcón, A-L-A-R-C-Ó-N.

3 MS. PEREZ: Denia Perez.

4 THE COURT: Well, welcome. Thank you for being
5 here.

6 All right, Mr. Lee, go ahead.

7 MR. LEE: Thank you, Your Honor.

8 I just wanted to mention that I will address this
9 Court's authority to modify its prior order and discuss
10 interim relief that should be afforded the plaintiffs.

11 Attorney Hanson here will address further processing
12 and Extended Renewal Applicants.

13 THE COURT: Okay.

14 MR. LEE: Your Honor, modification of this Court's
15 December 2020 order is necessary to effectuate the intended
16 purposes of that order and vindicate the rights of named
17 plaintiff Johana Larios and approximately 80,000
18 similarly-situated class members who are first-time applicants
19 for DACA, and have submitted applications in reliance on this
20 Court's order.

21 Their applications remain stuck in limbo as of
22 July 16th, 2021. These 80,000 have been waiting for as long
23 as 18 months since applying, and the fear, anxiety and
24 uncertainty they feel about the future will continue for
25 months and years if nothing is done.

1 This Court's prior order not only provided hope to
2 the 80,000 themselves, but also touched the lives of hundreds
3 of thousands who are the family members they support and the
4 friends, neighbors and colleagues that make up their
5 communities.

6 This Court's order must be modified to be
7 implemented properly within the bounds of the Texas injunction
8 so that 80,000 Americans can be assured that they may remain
9 in the only country they have ever called home and work
10 legally to support their families and communities.

11 Your Honor, this Court has well-established
12 authority to modify its prior order. The Supreme Court,
13 Second Circuit, as well as this very Court have reiterated
14 that a court possesses the inherent power to modify an order
15 that it has entered.

16 This authority is especially significant when a
17 change in circumstances, or even a new appreciation of facts
18 in light of experience demonstrates the frustration and the
19 intended effects of an order. In such a situation, a Court
20 can and should adopt its prior order to accomplish its
21 intended purpose.

22 Your Honor, this Court was well aware of this
23 authority when it entered the order in December 2020, as it
24 reserved the right to impose further remedies if they become
25 necessary and retained jurisdiction of the matter for purposes

1 of construction, modification and enforcement.

2 When issuing that order, this Court contemplated the
3 relief of allowing first-time applicants to apply for and
4 receive DACA, if eligible, and does require defendants to
5 accept new DACA applications for consideration, among other
6 things.

7 All parties then proceeded with the understanding
8 that defendants would process and adjudicate all these
9 applications that it accepted. Though there were very few
10 grants, very few new grants of DACA in the first four months
11 following this Court's order, the defendants did eventually
12 ramp up their operations to the level of adjudicating
13 thousands of applications per month by April 2021.

14 However, less than three months later, in July 2021,
15 a district court in Texas enjoined defendants from issuing new
16 grants of DACA, and defendants subsequently not only ceased
17 all adjudications of applications, but also ceased all
18 processing of applications.

19 This represents a significant change in
20 circumstances from December 2020, and demonstrates the
21 frustration of the intended effects of that order.

22 THE COURT: Isn't the meaning of that order in the
23 Texas court such that the Department of Homeland Security has
24 no choice but to suspend its processing of these new
25 applications?

1 After all, the court in Texas carved out the renewal
2 of DACA applications and permitted those to go forward so as
3 not to create a major crisis among those who already had DACA
4 protections pending the outcome of the appeals to the Circuit
5 and to the Supreme Court.

6 MR. LEE: No, Your Honor. The Texas court enjoined
7 defendants from issuing new grants of DACA.

8 In December 2020, this Court ordered that defendants
9 should accept new DACA applications for consideration.
10 There's a lot of space between this Court's requirement to
11 accept for consideration and the Texas court's requirement not
12 to grant.

13 This Court, which was the one to certify the Batalla
14 Vidal class in the first place, has the authority to determine
15 what steps are required in between accepting for consideration
16 and granting, including the interim relief that we seek, as
17 well as other relief that Attorney Hanson will address.

18 If I may, Your Honor, I will address the interim
19 relief now.

20 THE COURT: All right, go ahead.

21 MR. LEE: Your Honor, plaintiffs request that the
22 Court modify its prior order to direct defendants to provide
23 interim relief for first-time applicants who have had valid
24 DACA applications pending as of July 16th, 2021.

25 Named plaintiff, Johana, and other class members in

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1 her position, rely on this Court's order and had a reasonable
2 expectation at the time of their submission that their
3 applications would be processed and adjudicated.

4 THE COURT: Well, wouldn't that -- I mean, let's
5 stop there for a minute.

6 The processing is an issue which we can talk about
7 that -- that is -- it's a mechanical issue, if you will, as
8 opposed to a substantive outcome issue.

9 But isn't it true that the granting of DACA
10 protection would definitely directly run afoul of the Southern
11 District of Texas injunction?

12 MR. LEE: No, Your Honor.

13 THE COURT: Which is -- which is a nationwide
14 injunction, and which I heard, which is very interesting, I
15 heard from former Attorney General Barr, we should have no
16 nationwide injunctions in the district courts, but I guess
17 this one's okay.

18 MR. LEE: Yes, Your Honor.

19 THE COURT: It all depends on where you're coming
20 from and where you're ending up.

21 So I don't want to be cynical about it, but I'm
22 cynical about it. Go ahead.

23 MR. LEE: Yes, Your Honor.

24 While issuing new grants of DACA would conflict with
25 the Texas injunction, providing interim relief, as plaintiff

1 seek here would not for a very important reasons.

2 Interim relief, first I will address the minimum
3 things that we are looking for, that plaintiffs are looking
4 for in interim relief.

5 Interim relief should, at minimum, assure that
6 first-time applicants are able to remain in the country while
7 they still have valid applications pending, and that they may
8 obtain work legally in the meantime.

9 THE COURT: Is the federal government, is the
10 Justice Department and the Department of Homeland Security
11 sending people back who are, arguably, DACA eligible at this
12 time?

13 Is this Administration doing that? Or are they
14 foregoing the possibility of doing that and waiting on the
15 outcome of the Appellate process and any potential
16 Congressional action?

17 MR. LEE: No, Your Honor, the Administration
18 currently is not deporting these individuals; though, they
19 legally remain able to be deported and also are not able to
20 work legally.

21 Your Honor, interim relief would have very important
22 distinctions from DACA that make providing interim relief not
23 conflict with the Texas injunction.

24 First, interim relief would be narrower than DACA in
25 its substantive offerings.

1 THE COURT: Okay, what is the interim relief that
2 you propose?

3 MR. LEE: Your Honor, the interim relief that
4 plaintiffs propose is limited to an assurance that first-time
5 applicants are able to remain in the country and able to work
6 legally. I will lay out the mechanisms that can happen in
7 this interim relief program.

8 DACA recipients currently receive awards of deferred
9 action that come or that the Supreme Court in *Regents*
10 identified as coming with associated benefits like Social
11 Security and Medicare, as well as eligibility for work
12 authorization and eligibility for advanced parole. Interim
13 relief can just be limited to the two main pillars that I've
14 identified previously.

15 Let me be clear, Your Honor, awards of deferred
16 action are not necessary to assure that these class members
17 are able to remain in this country.

18 Recent DHS memos have demonstrated that there are a
19 number of ways to address prosecutorial discretion to forebear
20 from removal action, including even just a letter that
21 expresses as such.

22 Without deferred action, interim relief recipients
23 would also not be eligible for Social Security benefits and
24 Medicare benefits. Furthermore, Your Honor, interim relief
25 does not need to include eligibility for advance parole

1 either.

2 The Texas court paid special attention to advance
3 parole as one of the major pillars of the DACA program and
4 grounded its ruling, in part, based on the availability of
5 advance parole and Social Security and Medicare benefits when
6 it issued its decision.

7 Furthermore, Your Honor, whereas DACA recipients are
8 able to indefinitely renew their status in two-year
9 increments, interim relief would be temporary and
10 non-renewable.

11 Interim relief would only last until the 80,000
12 pending applications meet final resolution, which can be
13 triggered by the implementation of a final rule, final
14 appellate decision on the Texas injunction, resumed government
15 adjudication or Congressional action.

16 Your Honor, until those things happen, these 80,000
17 class members depend on the proper implementation of this
18 Court's order so that they may be able to live without some
19 of -- go through right now because of this, as well as work
20 legally, instead of having to try to make ends meet in a way
21 that is not authorized.

22 THE COURT: Well, that's a very creative idea. Some
23 call it mini DACA. All right, that it's sort of DACA, it's a
24 part of DACA, but it isn't the relief that you seek ultimately
25 of approval of DACA recipients to get all the relief that

1 previous or current DACA recipients receive.

2 So I'm not sure that it doesn't sound more like
3 legislation or executive action than judicial action, and so
4 I'm somewhat sceptical about this Court's capacity, as much
5 authority as it might have in many respects to fashion a
6 temporary solution that could be -- that couldn't be
7 effectuated by the -- by the DHS or in consultation with the
8 Justice Department.

9 It's not exactly the outcome that courts engage in.
10 And you're asking me to do something that also could be
11 interpreted as running afoul of the decision of the court in
12 the Southern District of Texas.

13 I'm not about to contact the Court there to see if
14 it's okay with them, just as they were not going to contact me
15 to find out if their decision was okay with me. Because they
16 knew my basic view on the subject, and I think I know their
17 basic view on the subject.

18 So we have to be careful that we're not -- that this
19 Court is not going beyond the place where it can go in terms
20 of effectuating some interim relief, if we're going to be able
21 to do anything at this point while the matter is in the Fifth
22 Circuit.

23 So I want you to understand I'm very sympathetic
24 with you and sympathetic with the DACA recipients and
25 applicants for initial DACA approval, but I also have to be

1 mindful that we have a situation where there is an injunction
2 in Texas, and it's being reviewed by a Circuit panel. Oral
3 argument took place yesterday, and the Texas court did carve
4 out some interim relief for current DACA recipients.

5 So it is mindful that even -- even the injunction
6 has some -- is cabined in some way, which indicates is a
7 realization and people are already reliant on DACA who have
8 received DACA benefits.

9 And that's -- and that's really where we are. And
10 if I'm being asked to go beyond a certain point, it may not be
11 appropriate. I'm just trying to figure out what that point
12 is, and if I can be helpful in any way.

13 The ultimate question that I asked the very first
14 time we met on this case was "Where is Congress? Why can't
15 Congress help these DACA-eligible applicants?"

16 And by the way, I have the declaration from Connie
17 Nolan, who's the Deputy Associate Director of Service Center
18 Operations at the U.S. Citizenship and Immigration Services,
19 and she -- and this was signed on May 27th of this year, and
20 she indicated that there are 92,000 pending initial DACA
21 requests. So we're talking big numbers here of initial DACA
22 requests.

23 And then she also, you may have seen it and read it,
24 she also indicates why she believes that it is not prudent to
25 undertake the processing of DACA, initial DACA applicants at

1 this time.

2 So we can get into at that later. But that's a
3 practical issue, and it involves using a finite workforce,
4 which is doing other things, to turn to the job of
5 investigating candidacies for DACA of those who are not yet
6 receiving, so.

7 But go ahead.

8 MR. LEE: Your Honor, if I may, I would like to
9 respond to some of these concerns --

10 THE COURT: Sure.

11 MR. LEE: -- for at least two reasons.

12 First, Your Honor, defendants have the authority to
13 issue this interim relief. Defendants have previously --

14 THE COURT: Who has the authority?

15 MR. LEE: Defendants do, Your Honor.

16 THE COURT: Oh, okay. I'll get to them.

17 MR. LEE: Defendants have previously invoked this
18 authority to provide interim relief, as you say, that is just
19 short of final adjudication with something in between, has
20 previously invoked this authority to the fashion interim
21 relief programs for individuals stuck waiting long periods of
22 time for adjudication of their applications in other
23 immigration programs.

24 Most notably, Your Honor, defendants have afforded
25 the interim relief of work authorization and forbearance from

1 removal action for individuals with pending special immigrant
2 juvenile applications, individuals who have not completed that
3 process of special immigrant juvenile status.

4 Your Honor, defendants did not rely on any express
5 statutory language for interim relief for a special immigrant
6 juvenile. There is no such statute. Rather, defendants used
7 their inherent authority that is classified in 6 U.S.C. 202(5)
8 to establish immigration policy and priorities, as well as
9 their authority in 8 U.S.C. 1324a to issue work authorization
10 to noncitizens to create this program.

11 Your Honor, I would also like to note that it's
12 important to understand that this new policy for special
13 immigrant juveniles came largely as a result of a recent class
14 action lawsuit in the District of Massachusetts.

15 Following that lawsuit and following that Court's
16 order, defendants decided to create this policy and allow
17 interim relief to these special immigrant juveniles, who have
18 not concluded their process, so that they can be protected
19 from removal and be assured that they can obtain work legally
20 so they can go about their lives.

21 Your Honor, secondly, this Court does not have to
22 overextend judicial authority to direct defendants to create
23 such an interim relief program.

24 The Supreme Court has previously sanctioned this
25 type of approach where the Court directs the government

1 defendants to come up with the specifics of a remedial plan
2 according to the Court's general guidelines.

3 In *Brown v. Plata*, the Supreme Court affirmed the
4 District Court's order that required government defendants to
5 come up with the specifics, come up with the details of
6 remedial plan that achieved the goal that the Court laid out.

7 Your Honor, this Court today, or in the coming
8 weeks, can direct defendants to do the same here, and the
9 defendants can submit that plan for your approval.

10 Your Honor --

11 THE COURT: I want to just ask. You know, what
12 about the argument that could be reasonably made that this
13 Court's order has been fully complied with, and that what
14 you're asking goes beyond what this Court dealt with, which
15 was remedial in a sense, but has been fully complied with.

16 As a result of this Court's order, this DACA program
17 went back into operation, because Mr. Wolf was not lawfully
18 entitled to bring an end to it.

19 And so the job was done and now other litigants,
20 other plaintiffs, are going to a different court in a
21 different district. They didn't come to me, and they made the
22 application to a court in a district where they thought the
23 court would be more receptive to their views, legal and policy
24 views, than this Court might have been, and they received a --
25 they received the results that they sought, and now it's up on

1 appeal.

2 Why should I be moving into a realm that I was not
3 in when I issued a rather-narrow decision regarding the
4 lawfulness of Mr. Wolf's order or directive to terminate DACA?

5 Why is this something for this Court to do at this
6 time?

7 MR. LEE: Your Honor, plaintiff -- or the 80,000
8 class members --

9 THE COURT: 92,000. More. They're saying it's
10 92,000. That's not my number, that's their number. That's
11 the government's number, the defendant's number. That's a lot
12 of people.

13 I'll get to them. Go ahead.

14 MR. LEE: Your Honor, close to a hundred thousand --

15 THE COURT: That's better.

16 MR. LEE: Close to a hundred thousand class members
17 have not received --

18 THE COURT: There's also -- actually, it's sort of
19 humorous, but it's not funny, because what this does also is
20 it discourages people from applying.

21 I'm sure there are a lot of other people out there
22 who would -- would like to apply, who really don't want to
23 disclose their existence to the United States of America, to
24 the government, in case DACA is struck down and nothing is put
25 in place so that by either an administrative process or by a

1 statutory solution.

2 So it may be over a hundred thousand people. It
3 could be well over a hundred thousand people. And I'm just
4 saying the number I have from the Justice Department is
5 that -- Homeland Security, is that it's at least 92,000
6 people.

7 But we're talking about a massive group of people
8 who could benefit from this program. And hopefully Congress
9 could create a path to citizenship for these people that would
10 benefit not only them and their families, but also the United
11 States.

12 So -- and that's always been my position. I only --
13 you know, the decision that I made, back when, was only that
14 the -- that the would-be or or supposed Secretary of Homeland
15 Security didn't have the authority to upend the Obama
16 Administration's implementation of DACA.

17 Go ahead.

18 MR. LEE: Your Honor, this huge group, this huge
19 population who have not received full relief that they are
20 entitled to in their -- that they are entitled to in the
21 December 2020 order, come to this Court today to make sure
22 that they are given full relief, Your Honor.

23 Defendants violated the HSA, and this Court
24 rightfully found that it did so. In December 2020, it entered
25 remedies to address that violation.

1 When contemplating relief in that sense, this Court
2 contemplated that first-time applicants should receive DACA if
3 eligible, and all parties proceeded with that understanding.
4 This Court shared in that understanding as it required
5 defendants to report not only the number of applications that
6 it accepted in the first six weeks following this Court's
7 order, but it also required defendants to report the number of
8 applications that were adjudicated, approved, rejected and
9 denied, Your Honor.

10 THE COURT: But I didn't -- but the Court did not
11 issue an order providing declaratory relief. This was -- it
12 was basically a reporting requirement and didn't create an
13 obligation of the Department of Homeland Security to engage in
14 a -- engage in the program.

15 That was beyond what the Court did. The whole idea
16 was to cabin the remedy to the specific needs of the moment,
17 and perhaps it should have done more, but it didn't.

18 And then a court in Texas decided to take on, based
19 on litigation brought by a number of states, to take on the
20 substantive issue of whether DACA was lawful. And it made a
21 decision. It issued an injunction. And then that injunction
22 is now off on appeal.

23 And the defendant here is fighting, has appealed,
24 and is disagreeing with the Court in Texas, and this Court has
25 to be mindful of the current status of that case. That's all

1 I'm saying.

2 MR. LEE: Your Honor, if I may respond.

3 THE COURT: Okay.

4 MR. LEE: This the --

5 THE COURT: Then we're going to move on to the next
6 person.

7 MR. LEE: In the December 2020 order, this Court did
8 order that vacatur was not enough. There were more remedies
9 that were granted in that order, including the requirement
10 that defendants would accept DACA applications for
11 consideration.

12 At that time, that was enough for everyone to
13 understand that this would be processing and adjudicating as
14 well, but in July 2021, as I mentioned, there was a change in
15 circumstances where that no longer was clear that this
16 Court -- it was no longer clear that the language in the
17 December 2020 order meant what it once had.

18 Therefore, Your Honor, plaintiffs come to this Court
19 today to seek modification of your order to make sure that the
20 intention of this Court is effective.

21 THE COURT: All right. Thank you very much.

22 Now are you a student at Yale?

23 MR. LEE: Yes, Your Honor.

24 THE COURT: What year are you in?

25 MR. LEE: I'm going into my third year.

1 THE COURT: Are you looking for a clerkship?

2 MR. LEE: Yes, I am, Judge.

3 THE COURT: Well, you've done a very good job.

4 Thank you very much.

5 MR. LEE: Appreciate it, Your Honor. Thank you.

6 MS. HANSON: Good afternoon, Your Honor. Jessica
7 Hanson from the National Immigration Law Center.

8 THE COURT: Nice to see you.

9 MS. HANSON: Thank you.

10 The Court should modify its December 2020 order to
11 clarify that the order requires defendants to process pending
12 first-time DACA requests up to the point of decision.

13 This Court ordered defendants to accept first-time
14 requests for consideration. And the Texas order explicitly
15 acknowledges this Court's order, and then prohibits only the
16 granting of first-time requests.

17 But defendants have ceased all processing, other
18 than receiving the applications, issuing receipt notices, and
19 cashing class members' money orders.

20 The Texas court did not require this action, and
21 modification of this Court's order is necessary to effectuate
22 this Court's intent.

23 THE COURT: Yes, you know, I raised the issue of
24 that declaration by Ms. Nolan. And in that declaration, it
25 makes clear that much of what you're asking the Court to

1 require of the defendant is a processing which becomes stale
2 after a certain period of time, like the fingerprinting and
3 the security review of applicants. That after a certain
4 number of months, the process has to be restarted.

5 And so what I'm being told is that it doesn't make
6 sense that to have staff moved from other responsibilities to
7 undertake 92,000 investigations, when we don't even know, one,
8 whether the program will exist in a year; two, when -- if it
9 does continue to exist, when it will be reenergized, meaning
10 that the injunction of the Texas court will be lifted so the
11 processing may continue, or when Congress will get around to
12 enacting legislation which will by make DACA a -- unnecessary,
13 or codify DACA as part of our law.

14 So what the defendant is saying, and I'll get to
15 them, is that it doesn't make sense, operationally, for the --
16 to place this burden on the Department of Homeland Security at
17 this time. And how do you respond to that?

18 MS. HANSON: Yes, Your Honor. I have a couple of
19 points there.

20 So one note on the staleness issue of certain steps
21 being completed that expire after a certain period of time,
22 those expiration dates were created by defendants, and so just
23 the same, they could make exceptions here, or change their
24 policies about the longevity of certain checks.

25 But more important here, we've seen that the

1 processing does make a tangible difference for class members,
2 and that can be demonstrated when you compare plaintiff Johana
3 Larios Sainz, who's in court with us today, with plaintiff
4 M.B.F., who couldn't make it today. Both applicants applied
5 within days of Your Honor's December 2020 order, and days
6 apart from each other as well.

7 Plaintiff Johana Larios had never before had any
8 processing done, and so it took her almost six months to even
9 get an appointment to have her biometrics captured, whereas
10 plaintiff M.B.F. had had her -- certain processing steps
11 completed as a part of an unrelated immigration petition. And
12 because of that, USCIS used her same fingerprints and told her
13 that three days later, and within five months she had DACA in
14 hand.

15 So even if we know that under the current Texas
16 order USCIS is not able to grant new DACA, having processing
17 steps completed in advance makes a tangible difference in the
18 world we're in right now.

19 As I mentioned, all the moving pieces with the
20 different courts, potential legislation, potential rules
21 coming out. That's actually more of a reason for this Court
22 to act now on behalf of class members who are injured now.

23 Because if they are in the processing step further
24 up in the line, if there is a narrow opening again, like we
25 saw between this Court's order and the Texas order, they'll

1 have the best chance possible at getting their DACA
2 adjudicated at that point.

3 I would also mention that, as far as the processing
4 we're asking for, we are not trying to micromanage the
5 government or suggest specific steps or ordering of steps that
6 need to take place. We are simply asking for an order that
7 requires defendants to process applications to the fullest
8 extent possible under the law, up to the point of
9 adjudication.

10 And if Your Honor would like something that has more
11 detail, we would request that after issuing that order
12 requiring processing, Your Honor can refer us to mediation to
13 work out the details of what that processing could look like
14 so that it does make sense.

15 THE COURT: What about this extended renewal issue?
16 Are you going to discuss that? Because I find that to be an
17 interesting concept that you have that policy that's been in
18 place that requiring a DACA, someone who had DACA protection
19 but it had expired and was over a year old since it expired,
20 would have to apply as a new applicant.

21 MS. HANSON: Yes, Your Honor.

22 We are also asking the Court to monetize its
23 December 2020 order to clarify that defendants are required to
24 adjudicate these extended renewal requests as renewal
25 requests; not to cease requiring additional evidence, which is

1 what defendants do now, but to treat them as if they are
2 renewals, allowed by the Texas order, rather than classifying
3 them in USCIS systems as first-time applicants that have never
4 before had DACA.

5 We have seen that the Texas court explicitly said
6 that defendants could adjudicate renewals, regardless of when
7 they are submitted. And so more than a year after the
8 previous falls into regardless of when, we think those are
9 clearly renewal applications.

10 And the Texas court also recognized reliance
11 interest, and it said: It is not equitable for a government
12 program that has engendered such significant reliance to
13 terminate suddenly. But that's exactly what defendants have
14 done to these extended renewal applicants, who were able to
15 have DACA before they had DACA before and suddenly they're
16 left in the lurch.

17 And so we think that, you know, in the lack of any
18 argument from defendants as to why USCIS can not classify
19 these folks as renewals in their system, there's no other
20 reason why defendants are treating them like first-time
21 applicants, Your Honor.

22 THE COURT: Thank you.

23 MS. HANSON: And I can stop there.

24 THE COURT: Thank you.

25 All right, who's going to speak for the defense?

1 Don't fight on it, just...

2 MR. EARLY: Good afternoon, Your Honor. Cormac
3 Early.

4 THE COURT: Yes, just keep the microphone close.

5 MR. EARLY: Sure.

6 THE COURT: Because there are people in another room
7 as well.

8 MR. EARLY: Understood, Your Honor.

9 Your Honor, everyone in this room shares the goal of
10 fortifying and preserving DACA, including very much the
11 defendants, and we are making progress on the limited avenues
12 available to us in light of the Texas injunction.

13 As Your Honor mentioned, the argument in the Fifth
14 Circuit on the appeal of the Texas order took place yesterday.
15 The day before yesterday, the rule-making that DHS is
16 undergoing in response to the Texas order reached OIRA, Your
17 Honor.

18 THE COURT: Reach what?

19 MR. EARLY: OIRA review, which as Your Honor knows,
20 is one of the final steps before publication of the final
21 rule.

22 So --

23 THE COURT: For notice. That's not the end of the
24 road, that's just the beginning of the comment period.

25 MR. EARLY: No, Your Honor, the comment period

1 closed in, I believe it was November of 2021. This would be
2 publication of the rule.

3 THE COURT: When would this rule go into effect?

4 MR. EARLY: I'm not aware that an effective date has
5 been determined yet. That would be the final rule that is
6 published in the Federal Register. But the point for Your
7 Honor is that it has reached the final step of the
8 prepublication process.

9 THE COURT: Okay.

10 MR. EARLY: So beyond --

11 THE COURT: And how would that effect the injunctive
12 relief that was imposed by the Texas court?

13 MR. EARLY: Well, Your Honor, that would -- that
14 would, of course, depend on what the Texas court does in light
15 of the final rule, and it would depend on the exact scope of
16 the final rule itself which, of course, has not yet been
17 finalized. So it is, at this point, a little bit premature to
18 say.

19 That said, Your Honor, defendants are vigorously
20 pursuing all of the available avenues of relief. If we could
21 grant DACA, if defendants had their way, we would be granting
22 DACA right now to the 92,000 pending first-time applicants,
23 and --

24 THE COURT: Does that include applicants who
25 previously had DACA but had not applied for renewal within the

1 year?

2 MR. EARLY: As I understand it, yes, Your Honor, and
3 I will get to this in the renewal versus initial.

4 THE COURT: Go ahead.

5 MR. EARLY: But DHS policy consistently has been to
6 treat an application from someone who previously had DACA and
7 then reapplies for DACA more than a year after the expiration
8 of DACA, or after the DACA is terminated as an initial
9 application. And in the Nolan declaration, I believe that's
10 an approximate figure for initial applications.

11 THE COURT: Okay.

12 Go ahead, Mr. Early.

13 MR. EARLY: The problem for defendants, and for this
14 Court, is that we are bound by the Texas injunction. There
15 are limits as a result of that injunction to the kind of
16 relief that we can provide to the plaintiff class.

17 THE COURT: Well, do you agree with plaintiff that
18 you're under no obligation to stop processing people, as long
19 as you don't give them a DACA status at the end of the day?

20 MR. EARLY: Your Honor, candidly it is not entirely
21 clear. The Texas court said that we could, and let me quote
22 it, get the exact language here: It allowed us to accept but
23 not grant those applications. And it also separately enjoins
24 us from administering or reimplementing DACA. So we can
25 accept but not grant, and we can't administer and we can't

1 implement.

2 And with all of those, it may be possible that the
3 Texas court would view the kind of pre-adjudication the
4 plaintiffs are asking for as a violation, and the Court may
5 not.

6 THE COURT: You know, I'm a separate entity, and I
7 read that potentially as meaning that once DACA is granted,
8 that maintaining DACA or overseeing DACA, if someone is
9 granted DACA status, at that point that's maintaining DACA.

10 The idea of terminating processing doesn't strictly
11 fall within that description; does it?

12 MR. EARLY: Well, Your Honor, if Your Honor is
13 inclined to order that kind of relief, we have requested in
14 our brief that we be given some time to file a motion for
15 clarification with the Texas court. Because ultimately we are
16 not in a position to finally adjudicate what that order means,
17 and with respect to Your Honor or plaintiffs.

18 So if the Court is inclined to grant that kind of
19 relieve, we would want to seek clarification.

20 THE COURT: I have a class here. Does he have a
21 class in his case of applicants? Does he have a class action
22 where class has been established?

23 MR. EARLY: My understanding of that case is that
24 the plaintiffs are all states. I don't believe --

25 THE COURT: Well, that's another question, how they

1 have -- how does -- how does the quote "states" have standing
2 in a situation like this?

3 MR. EARLY: Your Honor, the position of the
4 government is that they do not.

5 THE COURT: Well I'm glad to hear that.

6 MR. EARLY: Again, we have fully and vigorously
7 pursued that argument in the Fifth Circuit.

8 THE COURT: I know. I understand that.

9 But what I'm saying to you is that the processing
10 function is relevant to the class and not relevant to the
11 states. And so while I will not tread into the space of the
12 four corners of that injunction, neither you nor anyone else
13 can convince me that I don't have a responsibility to protect
14 the rights of the class with regard to those functions that
15 were not the specific limitations placed on the DACA program
16 by some other court. All right?

17 I'm not asking you to go back and have a chat with
18 the judge in Texas about what my rights are as a jurist in a
19 class action. So let's not even go there. You can do what
20 you want, but I will tell you that, you know, if somebody else
21 hasn't said this is something you can't do, and I have a class
22 of people, then I'm still at liberty, because I have equal
23 status as a federal district judge approved by the same Senate
24 that approved the other judge at the same level to implement
25 as much of my case as I feel is appropriate.

1 I'm very careful about not going somewhere where
2 it's going to create a direct conflict with another judge's
3 injunction. I respect that. But, you know, the idea that
4 it's not in -- it's not in the injunctive document, and you're
5 not sure, well, I don't have to -- I don't have to be limited
6 by that document if it doesn't make reference to a function
7 that I serve on behalf of a class action.

8 The states are not a class. These people are a
9 class. So I just raise that.

10 MR. EARLY: Certainly, Your Honor.

11 THE COURT: And I'm not teaching federal courts
12 here, I'm just saying that this is one of the problems that we
13 have where different interests are being adjudicated in
14 different places involving the same group of people who are
15 simply asking to be protected from an appropriate removal from
16 the United States, in their view.

17 So go ahead.

18 MR. EARLY: Certainly, Your Honor.

19 THE COURT: And I'm not arguing with you, I'm
20 just -- I understand the Justice Department has to deal with
21 everybody. But I'm telling you that if it's not in the
22 injunction, you know, I'm not bound by it what's not there.
23 That's what I'm telling you. Go ahead.

24 MR. EARLY: Certainly, Your Honor. I don't, by any
25 means, want to suggest that Your Honor is bound by the Texas

1 court.

2 THE COURT: You're being careful. Go ahead.

3 MR. EARLY: Yes, I just --

4 THE COURT: I know.

5 MR. EARLY: I want to be clear that we as the
6 defendants are bound, and we need to be appropriate.

7 THE COURT: Well you're bound to what's in the
8 injunction. You're not bound to go back and say, You didn't
9 talk about it, so now what are you going to do?

10 Because that's what you're really saying that if it
11 isn't there, it isn't there, and these plaintiffs want this
12 Court to order that processing occur without implementation of
13 the grant of DACA, and you'll go after the Court in Texas and
14 ask the question, Gee, you didn't mention it, did you really
15 want to mention it? I don't -- I don't get that, frankly.

16 Although I will say, that the judge in Texas did
17 carve out the ability of the judge -- of Homeland Security to
18 renew DACA while this matter is being resolved by the
19 Appellate courts.

20 So there was a sensitivity there on the part of the
21 judge in the Southern District of Texas, and I -- you know, I
22 wanted to recognize that. It wasn't -- it wasn't a
23 completely -- the judge didn't completely eviscerate DACA, the
24 judge simply made a ruling and said that pending the outcome
25 of Appeals, current DACA recipients could be renewed. Isn't

1 that right?

2 MR. EARLY: Yes, Your Honor.

3 THE COURT: All right, so we have that much.

4 MR. EARLY: I think, Your Honor --

5 THE COURT: I just want to make my position
6 perfectly clear, that I don't feel bound by something that's
7 not there. Okay? If it's not in his order, then it's not in
8 his order. And I'm not bound by something that may be, you
9 know, the plaintiffs in that case wanted but they didn't get.
10 And so I don't feel constrained by something that's -- that
11 hasn't been placed in an injunction.

12 Go ahead.

13 MR. EARLY: Certainly, Your Honor. And I think it's
14 certainly true that the sensitivities around potential
15 conflicts between injunctions are different for the different
16 forms of relief the plaintiffs are seeking.

17 THE COURT: Understood.

18 MR. EARLY: Since Your Honor raised
19 pre-adjudication, there are two other reasons, aside from the
20 sensitivities, with respect to the Texas order that defendants
21 oppose that particular relief.

22 The first, in particular to the pre-adjudication,
23 which Your Honor already discussed, is simply a matter of
24 administrative inefficiency that plaintiffs are proposing that
25 defendants take a series of steps, none of which would likely,

1 although to be fair, no one knows exactly, when, if ever,
2 defendants will be allowed to grant DACA to first-time
3 applicants.

4 Many of those steps may need to be redone. And
5 that, of course, creates a large administrative burden for
6 USCIS, which is already, as a result of COVID, as a result of
7 resource shortages that date back at this point many years,
8 dealing with significant backlogs, and ultimately the resource
9 pool USCIS has to adjudicate a wide variety of different
10 applications for immigration and DACA benefits are all coming
11 from the same resource pool, as I understand it.

12 And so to take resources and ultimately to apply
13 resources to the kind of pre-adjudication the plaintiffs are
14 proposing, would be taking resources from other applications
15 which currently can be granted and would lead for some people
16 to have even longer processing times.

17 THE COURT: You mean for other forms of
18 adjudication, other matters.

19 MR. EARLY: Yes, Your Honor.

20 THE COURT: All right. Well, I think that's --
21 that's what Ms. Nolan is talking about here in her -- in her
22 declaration; isn't it, that there are other programs? You're
23 human resources within -- within Homeland Security have been
24 shifted to other forms of adjudication or other programs.

25 MR. EARLY: Yes, Your Honor. And it's been

1 defendants' administrative judgment that's the most efficient
2 way to manage ultimately limited agency resources, given the
3 constraints they face.

4 And that gets me on to the second reason to oppose
5 relief here, which is simply that, as Your Honor has already
6 mentioned, this Court entered relief on a claim under the
7 succession provision of the Homeland Security Act. And the
8 relief that plaintiffs seek is simply not tied to the
9 violation that this Court has found.

10 Now plaintiffs were given the opportunity to amend
11 their complaint, or in some way to raise a claim about the
12 resource allocation decision when it comes to
13 pre-adjudication, or the other decisions that defendants have
14 taken to comply with or manage the effects of the Texas order,
15 but plaintiffs chose not to amend their complaint.

16 So, again, the only operative judgment here is a
17 judgment on the succession provision of the Homeland Security
18 Act, that Chad Wolf was not validly serving as acting
19 secretary, and that being the case, that simply does not
20 relate to the relief the plaintiffs are now seeking.

21 THE COURT: You're saying it's outside the scope of
22 the plaintiffs' application?

23 MR. EARLY: It's beyond the scope of the judgment,
24 Your Honor, and as a result of that, it's beyond the scope of
25 this Court's injunctive power.

1 And certainly if this Court were to enter a
2 different judgment, then different relief may be appropriate
3 and, of course, depending on the judgment the plaintiffs may
4 seek, we would defend or oppose that.

5 THE COURT: You mean, in other words, it's premature
6 for the Court to consider this type of relief until the Court
7 receives an amended complaint seeking the relief?

8 MR. EARLY: Right, Your Honor.

9 THE COURT: Interesting.

10 MR. EARLY: But there's simply isn't a judgment that
11 would support the kind of relief the plaintiffs are seeking,
12 and this judgment could not support that kind of relief.

13 THE COURT: All right. Thank you.

14 MR. EARLY: If, for example, this case had never
15 been brought, and the Secretary had taken office and rescinded
16 the whole memorandum on his own, as an independent action, and
17 given -- changed the one year and limit documents to two years
18 and taken all the steps that this Court got there in about
19 three months ahead, but if he had taken those steps
20 independently, and then the Texas court had come along in July
21 of 2021 and entered the order that it did, if plaintiffs were
22 to bring this as a fresh lawsuit now, raising only the
23 Homeland Security Act succession provisions, the relief that
24 they were seeking -- that they're seeking now simply would not
25 flow from the alleged violation.

1 The violation has been fully remedied by the
2 existing relief that this Court ordered, and that idea applies
3 across the board to all forms of relief the plaintiffs are
4 seeking, but none of it is within the scope of the judgment,
5 and thus within the scope of this Court's power.

6 There are -- certainly there are distinct arguments
7 for each form of relief, and I've already discussed some of
8 them for pre-adjudication. I think maybe the most important
9 is the interim relief that plaintiffs are seeking. And that
10 would, again, obviously respecting that Your Honor is not
11 bound by the injunction, but we very much are, but that form
12 of relief is, we think, exceedingly risky in terms of creating
13 conflict with the Texas court.

14 So plaintiffs make the argument that various
15 benefits and ancillary aspects of deferred action could be
16 carved off, and some of that we would need to dispute.

17 THE COURT: A mini DACA, you're talking about?

18 MR. EARLY: Right. So plaintiffs say that --
19 they're really only seeking two core benefits, which are
20 forbearance and work authorization.

21 THE COURT: You don't need to go into that. I think
22 I made it pretty clear that it would be pretty difficult for
23 me to do something like that.

24 MR. EARLY: Right. Again, we think that would be --

25 THE COURT: All right.

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1 MR. EARLY: -- the most obvious.

2 I do want to --

3 THE COURT: The processing issue is a real issue for
4 me, because I think it's important that we continue to give
5 these applicants the sense that their interests are being
6 served by the process -- the processing of their applications
7 short of granting the relief, final relief. And that's really
8 something that, you know, it's how things look to people who
9 feel that they are at risk of some major disruption in their
10 lives when they've spent their entire conscious existence as
11 Americans, and someone or somebody or some state attorney
12 generals are seeking to take that away from them.

13 I think that's -- this is about human beings who are
14 being placed in an untenable circumstance by people they don't
15 know who have objectives that they don't share when they've
16 been working very hard to be Americans. That's really what
17 we're talking about here.

18 The last time I said stuff like that, you know, the
19 Attorney General of the United States, that Attorney General
20 was hysterical over the fact that a judge would actually think
21 about people as opposed to politics. He's not there any more.

22 MR. EARLY: Certainly, Your Honor. And I do want --

23 THE COURT: Is he your former boss? I didn't want
24 to disparage your former boss.

25 MR. EARLY: Well, boss' boss' boss, but I'm not sure

1 which Attorney General you're referring to.

2 THE COURT: Sessions.

3 MR. EARLY: Sessions, I believe he was gone before I
4 joined the Department, Your Honor.

5 THE COURT: You're the lucky one.

6 MR. EARLY: No commenting on that, Your Honor.

7 I do want to emphasize, though, in line with the
8 President's directive to preserve and fortify DACA that we,
9 the defendants, do take very seriously that these are real
10 human beings who are plaintiffs, that they've been waiting at
11 this point 18 months for processing, for relief that, in our
12 view, is very much within defendants' power to provide. In
13 fact, we are fighting with every tool available to us to be
14 able to provide the applicants, and our judgments about the
15 kinds of relief that we can reasonably afford plaintiffs,
16 that's not -- that's not a judgment that was taken in July of
17 2021.

18 But we are dealing with a world which the processing
19 the plaintiffs are asking for has a limited shelf life.

20

21 (Continued on the following page.)

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1 MR. EARLY: And so, the administration needs to
2 balance, certainly, very real concerns that your Honor
3 mentioned and that the plaintiffs have raised about the
4 processing of these applications. So that if we are
5 eventually in a position to grant them, we can do so
6 expeditiously, and not drag out the state of legal limbo that
7 members of the plaintiff class may find themselves in, we have
8 to balance that against the risk that much of this work will
9 be wasted and will ultimately come at the expense of other
10 people who are also waiting for immigration and nonimmigrant
11 benefits.

12 So that is a decision that the defense takes very
13 serious and We appreciate and understand that these are
14 people's lives and people's livelihoods in the United States
15 and the ability to work and come into the community. But
16 those considerations are difficult administrative
17 considerations about resource allocation, about what is
18 legally feasible, litigation timing that are properly left to
19 the Executive Branch.

20 THE COURT: Thank you. Anything else.

21 MR. EARLY: I do want to briefly touch on the
22 initial and renewal application issue that plaintiffs have
23 raised. And I appreciate certainly that the nomenclature is
24 maybe not exactly intuitive.

25 THE COURT: Go ahead briefly.

1 MR. EARLY: The initial and renewal applications,
2 those are terms with a defined meaning, and they have had a
3 defined meaning in the DACA program from the beginning. So
4 while we might colloquially think that someone, who, at any
5 point in the past had DACA and applied for DACA again that
6 would be known colloquially as a quote, unquote, renewal.

7 As a matter of the way the DHS has consistently
8 defined those terms, a renewal application is from someone who
9 has DACA at the time of application, or who had DACA and DACA
10 expired less than a year before the time of the application.
11 Everyone else, whether it's someone who never had DACA at all,
12 someone who had DACA but it was terminated, or someone who had
13 DACA and it's been more than a year since it expired those are
14 all initial applications.

15 And so, when your Honor ordered defendants, I
16 believe, it was back in 2018 to process DACA applications, and
17 I don't have the exact wording in front of me, but for those
18 who had already received DACA that defendants primarily
19 processed renewal applications but they also processed quote,
20 unquote, initial applications. And the only initial
21 applications that defendants processed were those from
22 applicants who had received DACA and their DACA had expired
23 for more than a year they all went into the quote, unquote,
24 initial application category.

25 THE COURT: I see.

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1 MR. EARLY: And so, the Texas court enjoined us from
2 granting anything other than renewal applications.

3 THE COURT: With the understanding that renewal had
4 a defined meaning, the one you just described.

5 MR. EARLY: Yes. And within, I believe we've also
6 submitted it here. It's the declaration of Tracy Renaud which
7 was submitted to the Texas court within two weeks of its order
8 that raised this distinction.

9 THE COURT: I see. Okay.

10 MR. EARLY: And that's been the Texas court's
11 understanding. So for, again, the same reasons about the
12 scope of the Texas injunction --

13 THE COURT: Thank you.

14 MR. EARLY: -- we're reluctant to grant that relief.

15 THE COURT: Thank you.

16 A few issues there. A question of whether what's
17 before this court would authorize it to provide the kind of
18 relief that is being sought now by plaintiffs or whether you
19 would have to amend your complaint. If the Court doesn't have
20 something before it upon which you could issue relief, then it
21 can't issue relief, that's number one. And if there's
22 anything else that the defense has of raised that you'd like
23 to briefly comment on before we adjourn.

24 Mr. Lee.

25 MR. LEE: Thank you, your Honor.

1 In response to the defendant's point about the
2 amended complaint, your Honor, plaintiffs are not required to
3 file an amended complaint here because we are merely seeking
4 that this court's prior order, which was entered to remedy the
5 HSA violation, is given proper effect for the 80,000 pending
6 applicants, your Honor.

7 As I said before, defendants violated the HSA. This
8 Court found that this Court granted the remedies that it did
9 in December 2020 and we are just merely seeking to ensure that
10 those terms are followed, your Honor.

11 Finally, I point to the December 2020 order, your
12 Honor. Your Honor had written that in addition to vacating
13 the Wolf memorandum, the Court orders additional relief, your
14 Honor.

15 Furthermore, in the discussion of the Final Rule
16 Timeline that defendants have brought up, their discussion
17 bolsters both my argument as well as attorney Hanson's
18 argument. Publication -- the fact that the publication of the
19 rule may be soon is more reason to order processing so that
20 close to a hundred thousand are in the best position to access
21 it while it's still live and before it's shut down again which
22 defendants have no answer to whether that would happen.

23 Your Honor, because of this uncertainty, it is
24 necessary for processing to be done as much as possible so
25 that when this window is opened, and it may be brief, that as

1 many applicants as possible may go through those doors.

2 Your Honor, that discussion of the final rule, the
3 vague timeline of the final rule, also bolsters the argument
4 for interim relief. They say that it's soon but they have no,
5 not even an understanding of when that might be, not even
6 months, not even years, we don't know it could be any of
7 those, it could be never.

8 Your Honor, these delays are the reason why
9 plaintiffs come to you today. Class members have been waiting
10 for as long as 18 months and counting, your Honor.

11 As I mentioned, in the District of Massachusetts
12 that provided interim relief for special immigrant juveniles,
13 they relied on this delay to order interim relief as well as
14 deny a motion to stay by government defendants because they
15 claimed that they had some type of action that they were
16 preparing on a vague timeline as well.

17 Your Honor, defendants also focus on the word
18 "administer" in the Texas injunction, your Honor. This
19 Court's order in December 2020 -- the validity of this Court's
20 order in December 2020 is not disputed by any party or court,
21 and thus, the Texas court does acknowledge that applications
22 are able to be accepted.

23 Furthermore, your Honor, the Government has cashed
24 the checks that have been submitted by these 80,000, 92,000,
25 close to a hundred thousand people. Your Honor, that's

1 anywhere from \$40 to \$50 million that they have cashed and
2 will not be refunded to those people. These actions are
3 currently deemed to be allowed and, therefore, this court, as
4 you correctly pointed out, which was the one to certify the
5 Batalla Vidal class has the authority to determine what other
6 steps are within the bounds that do not fall under the Texas
7 injunction, your Honor. Just as accepting is okay, just as
8 cashing checks are okay, this court can determine what else is
9 okay in between accepting for consideration and granting
10 including interim relief and the steps that attorney Hanson
11 had outlined.

12 Your Honor, if I may conclude with discussion with
13 interim relief, again, I want to reiterate that these delays
14 are extremely, extremely difficult for these close to a
15 hundred thousand people who have to find some way, some way
16 outside of law, some way to find a way to support their
17 families, to keep living in their communities, your Honor.

18 If your Honor denies interim relief, we would ask
19 that you would do so without prejudice so that we may come
20 back to you, come back to this court if delays are further, if
21 delays are continued even further than it has already.

22 Thank you, your Honor.

23 THE COURT: Thank you. All right. I deem the
24 motion submitted and I appreciate the arguments of both sides.

25 This has been, this is a very difficult circumstance

1 that we're in and, once again, I really do hope that we will
2 have a solution that is legislative, if possible, so that we
3 can forgo having courts involved in what is fundamentally a
4 critical national policy discussion and the rights of so many
5 fine people are hanging in the balance.

6 So, again, I thank the applicants who are here. I
7 thank the attorneys who are working so diligently for these
8 individuals and the Court will give a lot of careful attention
9 to the arguments that have been made.

10 So, again, thank you, everyone, have a nice day.

11
12 (Whereupon, the matter was concluded.)

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14 * * * * *